IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PRINCE ATUM-RA UHURU MUTAWAKKIL,
also known as NORMAN GREEN,

ORDER

Plaintiff,

11-cv-471-slc[1]

v.

PETER HUIBREGTSE, JUDITH HUIBREGTSE,
LEBBEUS BROWN, CHAD LOMEN,
ELLEN RAY, BRIAN KOOL
and DIANE ALDERSON

Defendants.

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Both sides have responded to this court's August 11, 2011 order in which I directed the parties to show cause why plaintiff Prince Atum-Ra Uhuru Mutawakkil's state law claims should not be remanded to state court. I am remanding those claims because neither side has shown that any other option is proper.

On July 8, 2011, defendants removed this lawsuit from the Circuit Court for Dane County, pursuant to 28 U.S.C. §§ 1441 and 1446. In the August 11 order, I screened the

[1] I am exercising jurisdiction over this case for the purpose of this order.

complaint under 28 U.S.C. §§ 1915 and 1915A to determine whether the complaint stated a claim upon which relief may be granted. I dismissed some federal claims, but I allowed plaintiff to proceed on his claim that defendants Peter Huibregtse, Judith Huibregtse, Lebbeus Brown, Brian Kool, Chad Lomen, Ellen Ray and Diane Alderson are prohibiting him from identifying himself using his religious name, in violation of his rights under the free speech clause, the equal protection clause, the free exercise clause and the Religious Land Use and Institutionalized Persons Act. With respect to plaintiff's state law claims, I noted that sovereign immunity principles prohibit federal courts from issuing injunctive or declaratory relief under state law against state officials. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984); Benning v. Board of Regents of Regency Universities, 928 F.2d 775, 778 (7th Cir. 1991). Accordingly, I directed the parties to show cause why plaintiff's state claims should not be remanded to state court.

Both sides' responses to the August 11 order are somewhat puzzling. Neither side argues that this court may exercise jurisdiction over the state law claims. However, defendants argue that the state law claims should be *dismissed* rather than remanded. Plaintiff's response is more convoluted. He says that he filed a motion to remand *all* claims, which the court failed to address in the August 11 order. He asks for 30 days to do legal research in support of that motion.

I will address plaintiff's response first. The court did not receive a motion by plaintiff

to remand the entire case to state court, but even if it had, I could not have granted it. Defendants had a right under § 1441 to remove the federal claims to this court, even if the state law claims belong in state court. "If some parts of a single suit are within federal jurisdiction, while others are not, then the federal court must resolve the elements within federal jurisdiction and remand the rest—unless the balance can be handled under the supplemental jurisdiction." Bergquist v. Mann Bracken, LLP, 592 F.3d 816, 819 (7th Cir. 2010). Further, a review of defendants' notice of removal does not reveal any procedural defects. Defendants filed the notice within 30 days of being served with the complaint as required by 28 U.S.C. § 1446(b), and they consented unanimously to removal. Pettitt v. Boeing Co., 606 F.3d 340, 343 (7th Cir. 2010) Thus, plaintiff could not argue successfully that this court lacks jurisdiction over the federal claims.

It has been two months since defendants removed the case and plaintiff has not even hinted at a legitimate ground for objecting to removal. Giving plaintiff more time to file a response would serve no purpose but to delay the case.

I turn to defendants' response. They argue that "[r]emanding any equivalent state law claims would allow two parallel action[s] to proceed," which would be an inefficient use of the resources of the parties and the courts. Dfts.' Br., dkt. #4, at 3-4. Defendants may be right, but they cite no authority to support a view that I may dismiss plaintiff's state law claims to further judicial economy under these circumstances. Even defendants recognize

that I could not dismiss the state law claims with prejudice, which would mean that plaintiff would be free to refile them immediately in state court. Thus, dismissing the state law claims would serve no purpose but to require plaintiff to pay a second filing fee in state court. Because it is defendants' decision to remove the case that requires parallel proceedings, it would not be fair to impose that cost on plaintiff. If defendants believed that it was important to hear all of the claims in one forum, they should not have removed a case that included claims over which this court did not have jurisdiction.

In the alternative, defendants ask the court to "stay remand of the state law claims pending final resolution of these federal proceedings." Id. at 4. Again, defendants cite no authority for this proposition. If a court does not have jurisdiction over particular claims, it cannot "hold on" to them to make things easier for one side. Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). If defendants are correct that plaintiff's state law claims are duplicative of the federal law claims, they are free to ask the state court to stay proceedings on those claims pending resolution of the federal claims in this court.

ORDER

IT IS ORDERED that plaintiff Prince Atum-Ra Uhuru Mutawakkil's state law claims

are REMANDED to the Circuit Court for Dane County.

Entered this 7th day of September, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge